Applicant : Eric D. Fagerburg et al. Atny's Docket No.: 10559-322001/P9683
Serial No.: 09/752,100
Filed : December 28, 2000

35 U.S.C. § 121 reads, "If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions." Thus, restriction is proper only if the inventions are "independent and distinct." M.P.E.P. 802.01, headed "Meaning of 'Independent', 'Distinct'", reads as follows:

> INDEPENDENT
>
> The term "independent" (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation or effect, for example, (1) species under a genus which species are not usable together as disclosed or (2) process and apparatus incapable of being used in practicing the process.
>
> DISTINCT
>
> The term "distinct" means that two or more subjects as disclosed are related, for example as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made, etc., but are capable of separate manufacture, use or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER (though they may each be unpatentable because of the prior art).

It will be noted that in this definition the term "related" is used as an alternative for "dependent" in referring to subjects other than independent subjects.

The Examiner has not shown that the identified species "ARE PATENTABLE (novel and unobvious) OVER EACH OTHER." Should the requirement for restriction be made final, the Examiner is respectfully requested to rule that the identified Groups "ARE PATENTABLE (novel and unobvious) OVER EACH OTHER."

Moreover, nothing in 37 C.F.R. § 1.142 authorizes the Examiner from departing from the statutory requirements of 35 U.S.C. § 121 that the inventions be "independent and distinct" as a condition precedent to requiring restriction as observed in M.P.E.P. 802.01, and the directions of M.P.E.P. 803 that, "If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." (Emphasis added.) In the present application, all of the now pending claims have already been searched by the Examiner previously. Thus, this application clearly falls under the purview of M.P.E.P. 803 in that the search and examination of the entire application can be made without serious burden.

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In view of the above, withdrawal of the restriction requirement is respectfully requested.

No fees are believed due with this response. Nonetheless, please apply any necessary charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: November 28, 2005

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